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ABSTRACT

This paper provides a review of the history of school desegregation efforts in the courts from the middle of the nineteenth century to the present. Early cases at both state and federal levels sanctioned the notion of "separate but equal" education. During the first half of the twentieth century the Supreme Court held that the existence of separate but equal higher education facilities did not ensure plaintiffs equal educational opportunities. In the 1954 Brown decision the Supreme Court found segregation unconstitutional and ordered dismantling of dual school systems "with all deliberate speed." Attempts by southern states to delay desegregation brought a second round of federal action, and in 1964 the federal government passed the Civil Rights Act. In northern states, desegregation efforts focused on distinctions between de facto and de jure segregation and on attempts to include suburban areas in urban desegregation planning. The acceptability of the magnet school as a desegregation tool has not yet been decided. The paper concludes with brief analyses of the efforts of the Eisenhower, Kennedy, Johnson, Nixon, Carter, and Reagan administrations to further school desegregation. (Author/PGD)

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SCHOOL DESEGREGATION

PAST AND PRESENT

A paper presented by

Larry W. Hillman Ph.D

to

The American Educational Research Association

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The legal history of desegregation in public education in the United States has passed through several stages. During the years preceeding Plessy v. Ferguson, little if any federal intervention took place. Education problems were left to the discretion of the state and local bodies with the direction taken from the tenth amendment. This period was marked by the legislative establishment of separate schools, in effect, the dual school system emerged.

In the state courts, case law built up which later was interpreted to have violated both the first and fourteenth amendments of the constitution. Segregation became a way of life accepted both socially and morally. Those challenging the status quo had to bear the burden of proof.

Several early cases in which blacks petitioned the courts to attend white schools were based on the concept of proximity. In Roberts v. Boston (1849), the Massachussetts Supreme Court denied a black child attendance to a closer white school stating that the child was, in fact, not unlawfully excluded from public school. In its decision, the court had officially sanctioned the concept of "separate but equal schools".[1] The Roberts case set the tone of the judiciary in terms of desegregation for the next 100 years. John Hogan aptly and succinctly summarized the attitude that prevailed in the court for this period with the following points:[2]

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[1] Roberts v. Boston, 59 Mass. (5 Cush.) 198, 199, (1849).

[2] John C. Hogan, "Law Society and the Schools," Uses of the Sociology at Education in The Seventy-Third Yearbook of the National Society for the Study of Education, pt. II (Chicago, Ill.: University of Chicago Press, 1974), p. 415.

1. Education is a state matter to be dealt with under the state law.

2. The neighborhood school does not apply to Negroes and other minorities.

3. The state may close its schools if it chooses and leave education to private means.

4. There is no right of the individual to demand a public education.

5. The Massachusetts constitutional provision that "All persons...are equal before the law" is but a platitude--a principle--and we must look elsewhere in the law to find out what rights it covers.

6. Educational classifications requiring separation of the races are reasonable and therefore permissible.

The findings in Dietz v. Easton, New York State Supreme Court (1872), indicated that proximity did not create any right to attend a school and denied attendance of a black child to a nearer white school. It further stated that the school board had the power to establish racial attendance areas.[3]

Some inconsistency can be noted in court decisions regarding proximity. In Jacobs v. Frederick Township (1859),[4] the Pennsylvania court allowed students to attend school in an adjacent school one mile away from their residence, while the same court refused to allow transfer to a school in an adjacent district one-half mile distant (Freeman v. Franklin Township, 1861).[5]

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[3]People ex rel. Dietz v. Easton, 13 Abb. Pr. Rep. n.s. (N.Y.) 161-2, 163 (1872).

[4]Jacobs et al. v. School Directors of Frederick Township, 8 Pa. Sch. Jr. 42 (1859).

[5]Freeman et al. v. The School Directors of Franklin Township, Washington County, 37 Pa. 385 (1861).

The question of proximity was raised several more times in which the court refused to allow black children to attend nearer white schools. The court's reasoning was that "...the only inconvenience is of taking a long walk." (Lewis v. Board of Education, 1876);[6] the fact that one child had to go a greater distance to reach his place of instruction than he otherwise would have based on his classification is no basis for complaint (King v. Gallagher, 1883);[7] "the law does not undertake to establish a school within a given distance of anyone." (Lehew v. Brummell, 1890).[8] However, in Knox v. Board of Education, 1891, the Kansas Supreme Court directed the school board of Independence to admit Negro children to a white school on the grounds that it was only 130 yards away from their residence while the black school was 2300 yards distant.[9]

Then in 1896 Plessy v. Ferguson case legally established the right of states to provide "separate but equal" schools.[10] This action by the United States Supreme Court, in effect, endorsed and sanctioned the widely held belief of black inferiority and further entrenched the segregationist view. Court cases which followed Plessy spoke to and upheld the separate but equal doctrine, even though inequalities were found.

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[6]Lewis v. Board of Education of Cincinnati, 7 Ohio Dec. Repr. 129 (1876).

[7]People ex rel. King v. Gallagher, 93 N. Y. 438 (1883).

[8]Lehew v. Brummell, 103 Mo. 546, 552 (1890).

[9]Knox v. Board of Education, 45 Kansas 152 (1891).

[10]Plessy v. Ferguson, 163 U.S. 537 (1896).

Equal educational opportunity continued to be denied certain groups in the United States. One criterion for denial in several court cases was the degree of civilization each of these groups was pupported to possess. Much of this commentary was directed toward Indians in determining their eligibility to attend local schools. The Davis v. Sitka School Board (1908) case resulted in the declaration that "The Indian in his native state has everywhere been found to be savage, an uncivilized being, when measured by the white man's standards."[11] The outcome of the case was the exclusion of three mixed-blood families from the local schools in Sitka, Alaska on the basis that the children were not living a civilized life. Location of the residence played a significant factor in this decision. Had the children lived and played with "civilized" white children, the petition to attend the local school may have been considered.

A similar case involving Indians petitioning entrance into the white school of the community was that of Crawford v. District School Board for School District No. 7 (1913).[12] The difference between this case and that of Davis was the fact that the plaintiff, although of mixed-blood, lived within the white community. The Oregon Supreme Court upheld the plaintiffs request to attend the separate white school since they had adopted "the habits of civilized life." In the decision, however, the Supreme Court also sanctioned the principle of separate schools.

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[11]Davis v. Sitka School Board, 3 Alaska 481, 484 (1908).

[12]Crawford v. District School Board for School District No. 7, 137 Pac. 217, 218 (1913).

The criterion of safety in drawing attendance boundary lines has also been considered and ruled on by the courts. The Arizona State Supreme Court reversed a lower court ruling allowing Negro children to attend the white school because of the excessive longer distance and hazardous conditions Negro children experienced while traveling to school. In its decision, the State Supreme Court indicated that the greater distance was irrelevant to educational opportunities and the hazard were not so dangerous (although established technological facts indicated the contrary.)[13]

Several appealed the cases in higher education raised the question of whether separate but equal provided equal educational opportunities and began to direct the court's scrutiny toward the provision of equal intangible benefits. Gaines v. Canada (1927),[14] Sipuel v. Board of Regents University of Oklahoma (1950), [15] McLaurin v. Oklahoma (1950),[16] and Sweatt v. Painter (1950) [17] brought from the United States Supreme Court the decision that segregation solely on the basis of race, even though "equal" facilities were provided, deprived the plaintiffs of equal educational opportunities.

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[13]Dameron v. Bayless, 14 Ariz. 180, 184 (1912).

[14]Gaines, Missouri ex rel. v. Canada, 342 5 Ct. 121 (1938).

[15]Sipuel v. Board of Education, 332 U.S. 631 (1948).

[16]McLaurin v. Board of Regents 339 U.S. 641 (1950).

[17]Sweatt v. Painter, 339 U.S. 629 (1950).

The 1954 Brown decision repudiated Plessy and declared the legal sanction of segregation to be unconstitutional.[18] The decision provided an impetus to the civil rights movement which had begun to emerge in the 1940's through actions of the NAACP. Brown initiated a period of Federal Judicial Court intervention in the area of school desegretation.

In Brown II, the court established the implementation framework for dismantling the dual school system which permeated the South. Guidelines to lower Federal courts laid the responsibility on local school authorities, described the court function to be that of determining good faith implementation, urged equitable principles to guide remedies and stated that efforts should proceed with all deliberate speed.

However, the Supreme Court's decision ignited the hostility of the segregationist. The nebulous character of the guidelines of how to desegregate provided the opportunity for the open defiance, obstruction and delay of desegregation which followed for over a decade. Many of the problems occurred at the Federal District Court level. Federal judges did not enforce the law without the constant supervision of the higher court. In Briggs v. Elliott (1955), the U.S. Court of Appeals, Fourth Circuit, provided a narrow interpretation of Brown II by finding that integration was not required, only that desegration was prohibited.[19] This decision only helped to slow down the desegregation effort.

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[18]Brown v. Board of Education, 347 U.S. 483 (1954).

[19]Briggs v. Elliott, 132 F. Supp 776 (1955).

A continuous barrage of questions and an increased number of appeals flooded the courts and impeded progress. Unworkable or ineffective Freedom of Choice plans were approved, and in some states, schools with black and white populations were closed and tuition provided for white students to attend private schools. Boards of education would meet without a quorum thereby prohibiting an official conducting of business, to include approval of desegregation plans. Schools boards pleaded that to desegregate would result in violence from the community. Segregationists had run the gambit from open defiance, to resistance by appeals, to token desegregation under Freedom of Choice plans.

Many Southern states, notably South Carolina, attempted legislatively to create legal barriers to preclude potential plaintiffs from seeking legal remedies.[20] Southern State Attorney Generals initiated court action to enjoin the NAACP from operating in their states. The contention was that the NAACP groups in the southern states were branches of the national organization headquartered in New York. This fact required the NAACP to register in the state as a foreign (out-of-state) corporation. Since the NAACP had not registered, they should be enjoined from operation in the state. Other action by southern states along these lines was to enact legislation prohibiting the employment by any state agency NAACP members, and to establish fines for violation.

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[20]Albert P. Blaustein and Clarence Clyde Ferguson Jr., Desegregation and the Law: The Meaning and Effect of the School Segregation Career (New York: Vintage Brooks, 1962), p. 247.

Harassment of potential plaintiffs was instituted through time consuming and costly procedural stipluations to get through the state system of courts before filing for relief through the federal courts.

Southern attempts at delay invoked the ire of the higher courts. Progress in desegregation had not moved at a pace satisfactory to the higher court and steps were initiated to correct the delay in progress: Clemons v. Board (1956)[21] struck down gerrymandering to maintain segregated schools; New Orleans v. Bush (1957)[22] said that "state laws supporting segregated schools must give way to federal constitutional mandates."; Gibson v. Board of Public Instruction of Dade County (1957)[23] indicated that no law could justify violation of the Federal Constitution by requiring racial segregation in public schools; Cooper v. Aaron (1958)[24] state that "...hostility to racial desegregation would not be justified for not requiring present non-segregated admission to all qualified Negro students."; and Griffin v. County School Board of Prince Edward County (1964)[25] concluded that public schools could not be closed to avoid the effect of the law of the land as interpreted by the Supreme Court.

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[21] Clemons v. Board of Education of Hillsboro, 350 U.S. 1006 (1956).

[22] New Orleans Board of Education v. Bush, 77 S. Ct. 1380 (1957).

[23] Gibson v. Board of Public Instruction of Dade County, 246 F. 2d. 913 (1957).

[24] Cooper v. Aaron, 358 U.S. 1 (1958).

[25] Griffin v. County School Board of Prince Edward County, 377 U.S. 218, at 221 (1964).

The third phase of Federal influence in desegregation began with the legislation of the Civil Rights Act of 1964. The act prohibited discrimination on the basis of race, color or national origin. Under eleven different titles, the act provided the means with which to protect the fundamental rights of each citizen and established several other federal functions. The U.S. Commission of Civil Rights was authorized as both a national clearing-house for civil rights information and an investigative body. Federally assisted programs were to be denied where discrimination was not eliminated. Title IV addressed Public Education and authorized the US Office of Education to determine the extent of equal educational opportunity, to provide technical assistance and training to assist in the problems arising from desegregation, and to provide grants to allow school boards to employ specialists in in-service training programs. Additionally, the U.S. Attorney General was authorized to file civil suits to compel desegregation. To add further emphasis on enforcement, a penalty clause was incorporated providing for those in contempt of court a fine of not more than $1000.00 and not more than six months in jail. HEW guidelines were developed and used to determine the progress of desegregation in formerly segregated schools. At the same time, the Justice Department was authorized as the agency of enforcement.

The U.S. Supreme Court again intervened in 1966 in Green v. County School Board. [26] Freedom of Choice Plans were not working

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[26] Green v. County School Board, 391 U.S. 430 (1966).

and racially identifiable schools were still prominent. The court stated that Freedom of Choice plans were ineffective and plans that work "now" should be submitted. The U.S. Supreme Court spoke to the continued delay in U.S. v. Jefferson (1967),[27] in which it was stated, "the time has come for footdragging public school boards to move with celerity toward desegregation...". It further reprimanded the lower courts stating that under court ordered desegregation the courts were responsible for the efficiency of the systems' compliance. The court stated that the only acceptable plan is one that works.

Token desegregation was stopped and massive desegregation in itiated with the Singleton v. Mississippi (1969) case in which the court stated that delay in the name of deliberation is ended.[28] Desegregation, said the court, must occur "now", within the current school year. The court emphasized that the later the start, the shorter the time for transition.

In Swann v. Charlotte-Mecklenburg (1971) the court ordered the implementation of desegregation by any available means to include, if necessary, busing, altering attendance zones and pairing and clustering.[29] The court also found that in a school dis-

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[27]United States v. Jefferson County Board of Education, 386, U.S. 1001 (1967).

[28]Singleton v. School District (Mississippi) 419 F. 2d. 1211 (1969).

[29]Swann v. Charlotte-Mecklenburg Board of Education 401 U.S. 1 (1971).

trict where there was a past history of de jure segregation, it was the "effect" of the decisions made by school officials that was important and not whether these decisions were made with "intent" to maintain segregation.

During the desegregation activity in the south,northern states had adopted a passive attitude. The first northern school desegregation case heard by the Supreme Court was Keyes v. School District No. 1 (1913).[30] In its decision, the court distinguished between de facto and de jure segregation in one part of a city could lead to city-wide desegregation. As a result of this case, plaintiffs were required to prove both the existance and intent of segregation. Northern desegregation cases therefore required a little different approach.

Continous demographic changes in the north, still in effect today, resulted in a large increase of black population in urban areas and a decrease in white population. Desegregation planners were consequently faced with a problem of how to desegregate an inner city school system with a majority black population. Planners began to look to the suburban white areas as a source of students and introduced inter-district (Metropolitan) remedies for some cities and surrounding suburbs. In Milliken v. Bradley (1974) plaintiffs petitioned to include the suburban areas around Detroit in the desegregation plan.[31] The Supreme Court denied the petition

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[30]Keyes v. School District No. 1, 413 U.S. 189, 208, (1973).

[31]Milliken v. Bradley, 418 U.S. 717 9 (974).

by stating that a metropolitan plan could not be warranted unless it was shown that the metropolitan areas had contributed to segregation in the city.

Despite the Milliken decision, the possibility of interdistrict remedy remains, providing the standards set forth in Milliken are met and how the court interprets evidence submitted in light of Milliken.

Several other recent cases specifically address the metropolitan plan issue. In Indianapolis (United States v. Board of School Commissioners of the City of Indianapolis, Indiana, 1974), and interdistrict remedy was ordered to include the Indianapolis Public Schools and nineteen suburban school districts.[32] In 1975, the U.S. District Court, Western District of Kentucky, ordered implementation of an interdistrict plan between Louisville Public Schools and the surrounding Jefferson County Schools. The Kentucky State Board of Education directed the Jefferson County Public School District to assume operation of the Louisville Independent School District which had voted itself out of existance in 1975. All public school children fell within Jefferson County jurisdiction. A board of education consisting of five city and five county members was created to serve the new district. Shortly after the merger, the district was ordered by the court (U.S. Sixth Circuit) to implement a desegregation plan. In addition, the court provided specific implementation guidelines.

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[32]United States v. Board of School Commissioners of the City of Indianapolis, Indiana (1974).

The court addressed the same issue in Evans v. Buchanan (1975), in which the Delaware legislature was found guilty of degregative action with interdistrict effects.[33] Consequently, the U.S. Supreme Court upheld the lower court action and ordered the submission of an alternate Wilmington only and an interdistrict plan to eliminate existing school segregation in New Castle County. The future of the metropolitan plan may be determined by the type and amount of evidence presented and its interpretation under Milliken.

In the Hoots case in Pennsylvania eight school districts in eastern Allegheny County were joined in a case where they had caused General Braddock School District to be segregated. The Federal District Court found four of them guilty dismissed the others and ordered the joining of those four with General Braddock into a new school district.[34]

The magnet school has been another recent introduction as a tool for desegregation planners. This type of school offers a unique educational program in which students may opt to participate. This concept permits a freedom of choice element in school assignment which may be more compatible to community sanction. "The magnet school allows the desegregation process to take place through the mechanism of program option and thus reduces the arbitrary assignment of students to schools on the basis of race."[35]

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[33]Evans v. Buchanan (Delaware) 44 U.S. LW 3299 (1975).

[34]Hoots et.al. v. Commonwealth of Pennsylvania, W.D. Pa., April 28, 1981.

[35]Larry W. Hughes, William M. Gordon, and Larry W. Hillman, Desegregating America's School, New York: Longman Inc., 1980, p.19.

The magnet school concept has drawn interest because of its potential to accomplish; 1) reduced racial isolation; 2) the offering of a variety of options; 3) the improvemvent of instruction in large-city schools; and 4) development through funds available from federal, state and local sources.

The verdict on the effectiveness of magnet schools has not yet been decided. The time frames between today and the implementation of magnet schools, approximately 1976, may not yet be sufficient to adequately judge the impact of this concept. Proponents of magnet schools express optimism for its potential to solve problems incurred through desegregation. They argue that greater interracial contact will occur and may enhance the social process of integration. Jonathon Kozol, in "The American Educator," June 1980, reported that in Boston, where 22 magnet schools were created, "schools are working better than ever before in Boston's history."[36] According to Kozol, desegregation encourages the use of human resources and talents. He states, "It took the crisis of desegregation to awaken those men and women who were advisors to the courts to look around them at the riches in their midst."[37] Kozol contends that magnet schools helped to diminish the problem of white flight and stimulated university, cultural institutions and business interests.

Opponents of the magnet school concept offer several drawbacks. Jane Power, in Today's Education, indicates that to do what a

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[36] Jonathon Kozol, "The Re-birth of Education in Boston", The American Educator, Vol. 16 No. 5, p. 6.

[37] Ibid., p. 6.

magnet school is supposed to do--provide education of a calibre that will attract students--requires more money than the work of other schools."[38] Power feels magnet schools may only ease mandated levels of pupil transfer. An additional problem is offered by Power, "...unless all schools become magnets--seemingly a contradiction in terms--some children will be unable to attend magnets. The system will be open to charges of inequity towards toward children."[39]

The racial attitudes of Presidents have appeared to have much to do to either help or hinder desegregative efforts. In The Journal of Negro Education, 1974, Leon Jones stated, "The President of the United States does have a profound impact in school desegregation Charles Abrams cited a number of things that the President could do with the prestige of his office. In fact, he said, 'A whole arsenal of devices exits upon which the President may draw to assert his vast prestige, influence and power.'"[40]

The Brown case was deided during the Eisenhower administration (1952-1960). Although Eisenhower did send troops to Little Rock to enforce compliance with a court offer to desegregate a high school, and did establish a commission funding research on question of national importance (including desegregation), his major contention regarding desegregation can be seen in the statement, "wait until the hearts of men are changed."

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[38]Jane Power, "Magnet Schools: Are They the Answer?" Today's Education, September/October 1979, p. 70.

[39]Ibid., p. 70.

[40]Leon Jones, "Desegregation and Social Reform Since 1954," The Journal of Negro Education (Spring 1974): 167.

[41]Ibid., p. 167.

The President's non-commital response to desegregation however, was overshadowed by the actions of the Supreme Court. This was a period in which the Supreme Court with Chief Justice Earl Warren presiding, intervened in areas traditionally left to the state or local jurisdiction. The Supreme Court under Warren has been characterized as both daring and revolutionary.[42] The role of judicial restraint of preceding courts was replaced by judicial activism. Despite the lack of executive influence, the Supreme Court was unanimous in support of desegregation.

The Kennedy Administration, placing more emphasis on human civil rights, took action to enforce court ordered desegregation in the form of proclamations, executive and restraining orders to "...take all appropriate steps necessary to remove obstructions of justice..."[43] Legislation to protect civil rights was initiated during John Kennedy's administration and was carried to fruition under Lyndon B. Johnson.

In the Johnson Administration, the "Great Society" programs were initiated and the 1964 Civil Rights Act was passed. President Johnson's position on civil rights was made known in his State of the Union Address on January 9, 1964, in which he professed a strong commitment to the Kennedy administration Civil Rights Bill. Johnson stated the abolition of all racial descrimination was his goal and a moral issue to be resolved.[44]

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[42]"In the 13th Year of the 'Warren Revolution'," U.S. News and World Report, June 20, 1966.

[43]Charles U. Smith and Charles M. Grigg, "Public School Desegregation in the South," Uses of the Sociology at Education in The Seventy-third Yearbook of the National Society for the Study of Education, pt. II. (Chicago, Ill: University of Chicago Press, 1974) p.343.

[44]Lucius L. Barker and Twiley W. Barker Jr., Freedoms, Courts, Politics: Studies in Civil Liberties, (New Jersey: Prentice-Hall, 1965) p.238.

The administration of Richard Nixon fostered an attitude contrary to the idea of desegregation which slowed down the process. "Richard Nixon came into office as the first President since Woodrow Wilson openly and publicly committed to slowing the momentum of racial change." Nixon's administration has been equated to an anti-desegregation movement evidenced by his statement, "more urgent problems than desegregation."[45] Nixon attacked the HEW and the federal courts for their emphasis on desegregation. He favored the neighborhood school, endorsed freedom of choice plans and openly opposed forced busing.

President Ford followed the Nixon approach to desegregation. Ford, as House GOP minority leader, endorsed the idea of a constitutional amendment limiting desegregation.[46] He did, however, as President, sign the Housing and Community Development Act of 1974 which was the first piece of federal housing legislation since 1968.[47] This demonstation of concern for lower income urban residents, however, was overshadowed by the two year moratorium affected previously by Nixon.

In the Carter administration, the theme of Human Rights was dominant. Carter displayed a concern for the disadvantaged and took advantage of his power of judicial appointment. During his administration, Carter essentially restructured the federal courts by naming more judges than any other president in history.[48] He placed on the

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[45]Betty Showell, "The Courts, the Legislature, the Presidency and School Desegregation Policy," in School Desegregation: Shadow and Substance, ed. by Florence Hamlish Levinsohn and Benjamin Drake Wright (Chicago: The University of Chicago Press, 1976), p.101.

[46]Ibid., p. 103.

[47]Ibid., p. 103.

[48]Harry N. Gottlieh, "The Ultimate Solution: Desegre

bench more women, blacks and hispanics than all past presidents combined. In doing so, he equalized the previously predominate Protestant make up of the federal judiciary. However, Carter was unable to affect the composition of the Supreme Court as no vacancies through retirement or death occurred in his term of office. Carter was the first president since Andrew Jackson not to name at least one Supreme Court Justice.

The position of the Reagan Administration on Desegregation is not totally clear as of this paper. The leaning is back toward segregation. There have been overtures indirectly through budget statements to limit the activities in the judiciary. Particularly the Justice Department to limit the activity in desegregation. The Congress, the Senate in particular, has initiated legislation to limit the use of bussing of students as a tool for desegregation and to tie the appropriations for the Justice Department to some strong guidelines about federal intervention.[49] Thus far both houses of Congress have not concurred on this issue and the direction from the White House is fuzzy.

It is clear that the position of the present administration is not pro-desegregation.

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[49]David F. Pike, "How Carter Put His Stamp on Federal Courts", U.S. News and World Report, October 20, 1980, p. 50.

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